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SUPREME COURT OF THE UNITED STATES.

No. 106.

LESSEE OF MARY FARRE AND AL., PLAINTIFF IN ERROR,

vs.

A. S. LIPSCOMB AND AL

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF ALABAMA.

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J. & G. S. GIDEON, printers.

Pleas had before the honorable the circuit court of the United States for the fifth judicial circuit, and southern district of Alabama, at a term thereof begun and held in and for said southern district of Alabama, at the place of holding said court at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-three, before his honor John McKinley, presiding judge of said court.

Be it remembered that, heretofore, to wit, on the eighteenth day of April, in the year of our Lord one thousand eight hundred and thirty-nine, John Doe filed before said court his declaration in ejectment against Richard Roe, in the words and figures following, to wit:

Circuit court of the United States, southern district of Alabama, April term, 1839.

John Doe, who is a citizen of the State of Mississippi, complains of Richard Roe, who is a citizen of the State of Alabama, in custody of a plea of trespass, wherefore he hath entered upon a certain parcel of land in the district aforesaid, and ejected and expelled him therefrom; for that the said plaintiff, on the 1st day of January, A. D. 1815, at, to wit, in the district aforesaid, was in possession of a certain parcel of land situate in the city of Mobile, in the district aforesaid, known and described as follows: "All that certain piece of ground situate near the middle, and to the westward of the middle, of the Farre tract, extending from Government street to the southern boundary of said tract; commencing on the south side of Government street, at a point where the south boundary of said street intersects the north boundary of the said tract; thence west along the south side of Government street, till it strikes the east boundary line of the division of the Farre tract number ten, being a tract of thirty-one and one-fourth arpens, part of the said Farre tract set apart to William R. Hallett, according to the plat of division of the Farre tract by John James, and now on record in the office of the clerk of the county court of Mobile county; thence southwardly, along the eastern boundary of subdivision number two, to the southern boundary line of the Farre tract; thence south eighty-two degrees east, thirty-six chains and thirty-six links, to the division number four of the Farre tract; thence northwardly, along the western boundary of the said division number four, to the north boundary line of said tract; thence westwardly, along the north boundary line of the Farre tract, to the southwest corner of the lot of Joseph Barrigall; thence north, nineteen and one-fourth degrees west, along the fence of said Barrigall, six chains and ninety-five links, to the south side of Government street; thence west, along the south side of Government street, to the place of beginning. Also that parcel of ground in the district aforesaid, commencing at the channel of Mobile river, opposite the centre of Massachusetts street, to Emanuel street; thence north, along the east side of Emanuel street, to the north boundary line of divi-

sion number eight of the Simon Farre tract; thence westwardly, along the north boundary line of division number eight of the said tract, to the east boundary of division number five of the said tract; thence southwardly, along the east boundary line of said division five, fifteen chains thirteen links, to the division number seven of said tract; thence south eighty-two degrees east, along the northern boundary line of division number seven, to the channel of Mobile river; thence along the channel to the place of beginning. And the said plaintiff was so possessed, under and by virtue of a demise, commencing on the day and year aforesaid, for and during the full end and term of sixty years, from thence to be fully completed and ended, from and under Mary Farre, Alexis Farre, John B. Farre, Charles Farre, children of Simon Farre, deceased, and his heirs, who are all citizens of the State of Mississippi; and being so possessed, as aforesaid, of the said premises, with their appurtenances, under and by virtue of the demise aforesaid, the said defendant, on the first day of June, A. D. 1836, entered upon the possession of the said plaintiff, and with force and arms expelled [and] ejected the said plaintiff from the same, and has detained the same from thence hitherto; and other wrongs then and there did, against the peace and dignity of the State of Alabama. And for that also, the plaintiff aforesaid was possessed, as aforesaid, of a parcel of land situate in the district aforesaid, of the description before set forth, under and by virtue of a demise from Edward Farre, John B. Mirin and Mary his wife, Celeste Farre, Louis Farre, children of Louis Farre, deceased, who is a son and heir of Louis Farre, deceased, who was a son of Simon Farre, by which the said plaintiff was to have and hold the said premises for the full term of forty years, commencing on the first day of January, eighteen hundred and thirty-five, and from thence fully to be completed and ended; and being so possessed, in manner and form aforesaid, under and by virtue of the demise from the parties aforesaid, who are all citizens of the State of Mississippi, the said defendant, with force and arms, on the first day of June, 1836, entered upon the said plaintiff's possession, and ejected and expelled him therefrom, to the great wrong and injury of the plaintiff, and against the peace and dignity of the State of Albama. And for that also, the said plaintiff, on the day and year last aforesaid, at the district aforesaid, was possessed of the premises aforesaid, under and by virtue of a demise from Mary Farre, Alexis Farre, John Baptiste Farre, Charles Farre, children of Simon Farre, deceased, and Mary Farre, Louis Farre, Celeste Farre, Edward Farre, and John B. Nicaise, husband of the said last mentioned Mary, who are children of Louis Farre, deceased, under which the said plaintiff was to have and to hold the said premises for the term of forty years, commencing on the day and year aforesaid, and from thence to be fully completed and ended; and being so in possession the defendant, on the day and year aforesaid, with force and arms, entered upon the said demised premises, and ejected and expelled the said plaintiff from the same, to the great damage and injury of the plaintiff; to

his damage ten thousand dollars, and against the peace and dignity of the State of Alabama; and hence he sues.

GORDON, CAMPBELL & CHANDLER,
Atty's for plaintiff.

UNITED STATES OF AMERICA,
The State of Alabama, southern district:

GENTLEMEN: I understand you have an interest in, or claim title to, or are in possession of, the property described in this declaration of ejectment. I am sued as a casual ejector merely, and shall not defend the suit. I recommend you to appear at the next term of the circuit court of the United States, to be holden at Mobile in and for said district, at the time prescribed by law, and have yourselves entered as defendants, otherwise a judgment by default will be entered, and you will be turned out of possession.

RICHARD ROE.

To William Dutton, John I. Deshon, Firman Hurtell, William D. Gager, Alexander McKenzie, Charles J. Mansony, Henry Hitchcock, George N. Stewart, Abner S. Lipscomb.

I acknowledge myself security for all costs which may accrue in this case, this 18th April, 1839.

M. J. McRAE.

"Filed April 18th, 1839.

DAVID FILES, *Clerk.*"

"Received April 20th, at 4½ o'clock, 1839, and executed on William Dutton, John I. Deshon, F. Hurtell, Alexander McKenzie, Charles J. Mansony, Henry Hitchcock, and George N. Stewart. Wm. D. Gager and A. S. Lipscomb not found.

R. L. CRAWFORD, *U. S. marshal.*
By C. CUYLER, *D. M.*

Serv. and ret. 15."

And afterwards, the following consent rule and pleas, were filed, to wit:

Circuit court of the United States, southern district of Alabama, ninth judicial circuit, as of April term, 1839.

DOE, on the demise of Mary Farre et al.,
vs.
HENRY HITCHCOCK et al.

And the defendants, Henry Hitchcock, George N. Stewart, and Abner S. Lipscomb, by their attorneys, come and shew to the court that they claim to be invested with title (as trustees, for the use and benefit of a certain association of individuals called the Gordon Land Company) to the premises in the declaration of said plaintiffs specified and described, and that they are landlords of William Dutton, Jno. I. Deshon, Firman Hurtell, Alexander McKenzie, and Charles J. Mansony, who are served with notice, but who have no title to the premises sued for, but are tenants

merely, holding for and under the said Henry Hitchcock, George N. Stewart, and Abner S. Lipscomb, trustees as aforesaid; and being invested with legal title to said premises in said declaration of ejectment described and set forth, and pray to be admitted to defend against the said action of ejectment.

And the said Henry Hitchcock, George N. Stewart and Abner S. Lipscomb (trustees as aforesaid) now here in this court, admit that they are now, and were at the time of the filing and service of the said declaration of ejectment, and ever since have been, in the actual possession of the said lands and premises in the said declaration described in the several counts thereof claiming title thereto. And the said Henry Hitchcock, George N. Stewart and Abner S. Lipscomb (trustees as aforesaid) now here agree that they will, upon the trial of the issue on the said declaration of ejectment, when and where the same shall be had, and so often as it may be necessary, and they be required so to do by the court, admit and confess the lease, entry and ouster, as in the said declaration alleged, and rely for their defence upon the question of the title merely, and dispense with the filing of a new declaration in ejectment against them in this behalf, and will accept the declaration now filed as sufficient in this action.

1. Whereupon, the said Henry Hitchcock, George N. Stewart and Abner S. Lipscomb, defendants, being admitted by the court to defend*ant* in this behalf, by their attorneys come and defend the wrong and injury, when, &c., and say they are not guilty of the said several supposed trespasses and ejectments in the said declaration alleged, in manner and form as the said plaintiffs have declared, and of this they put themselves upon the country, &c.

2. And for further plea in this behalf, the said defendants say actio non, &c., because they say that the title of the said plaintiff to the premises in the declaration specified, did not accrue to the said plaintiff within twenty years next before the filing of the said declaration of ejectment, but accrued, if at all, previously to the first day of April, in the year A. D. eighteen hundred and nineteen; wherefore, and because the same was not in any manner arrested within the term of twenty years next before the commencement of this suit, and this they are ready to verify, &c.; wherefore they pray judgment, &c.

3. And for a further plea in this behalf, the said defendants say, actio non, &c., because they say that they, the said defendants, and those under whom they hold and claim title, have been in the quiet and peaceable possession of the said lands and premises in the said plaintiffs' declaration specified, and every part thereof, for and during the term of twenty years and more, next before the eighteenth day of April, in the year eighteen hundred and thirty-nine, and have, during the said term of twenty years and more, held and claimed the same adversely to the right and title of said plaintiffs; and this they, the said defendants, are ready to verify, &c.; wherefore they pray judgment, &c.

STEWART & EASTON, *Atty's for defts.*

I acknowledge myself security for costs, this 2 January, 1843.
CHAS. A. MARSTON.

Security approved.
D. FILES, *Clerk.*

And afterwards, to wit, at a term of said court, begun and held in and for the southern district of Alabama, at Mobile, on the second Monday of March, A. D. 1840, the following proceedings were had, to wit:

"The plaintiffs suggest the death of H. Hitchcock; the defendants confess lease, entry, and ouster; and, on motion of A. S. Lipscomb and George N. Stewart, landlords, are made defendants in this cause, and the same is continued."

And afterwards, to wit, at the same term of said court last aforesaid, the following further proceedings were had, to wit:

"It is ordered by the court, that the plaintiffs have leave to amend their declaration, and that the said plaintiffs have leave to take the depositions of all witnesses over fifty years of age who reside within one hundred miles, on giving ten days notice of the time and place to the opposite party."

And afterwards, to wit, at a term of said court, begun and held in and for said district, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, the following proceedings were had, to wit:

"It is ordered by the court that this cause be continued."

And afterwards, to wit, at a term of said circuit court of the United States for the ninth judicial circuit, and southern district of Alabama, begun and held in and for said district at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, the following further proceedings were had, to wit:

"By consent of parties in this case, it is ordered that either party have leave to take the depositions of witnesses over fifty years of age, and who reside within reach of subpœna; the same to be taken on interrogatories, on ten days notice, and that the clerk may issue commissions to any justice of the peace to take the same."

And afterwards, to wit, at a term of said circuit court, begun and held in and for said southern district of Alabama, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-one, before his honor William Crawford, judge of said court, the following proceedings were had, to wit:

"It is ordered by the court that this cause be continued."

And afterwards, to wit, at a term of said circuit court, begun and held in and for the said southern district of Alabama, at the place of holding said court, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-one, before his honor William Crawford, judge of said court, the following proceedings were had, to wit:

"On motion of the plaintiffs, by their attorneys, it is ordered by the court that this cause be continued."

And afterwards, to wit, at a term of said court, begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-two, the following proceedings were had, to wit:

"It is ordered by the court that this cause be continued."

And afterwards, to wit, at a term of said court, begun and held in and for the said southern district of Alabama, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-two, before his honor William Crawford, judge of said court, the following proceedings were had, to wit:

"The said plaintiffs having complied with the order of this court, as to security for costs, it is ordered by the court, on motion, that this cause be continued."

And afterwards, to wit, at a term of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, begun and held in and for said southern district of Alabama, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-three, before his honor John McKinley, presiding judge of said court, on the twentieth day of March, in the year of our Lord one thousand eight hundred and forty-three, being a day of said term, the following proceedings were had to wit:

"This day came the plaintiffs, by their attorneys, and suggest the death of Henry Hitchcock, esquire; and, on motion, it is ordered by the court, that the second and third pleas of the defendants be stricken out."

And afterwards, on the same day of said term, before his honor John McKinley, presiding judge of said court, the following proceedings were had, to wit:

"This day came the plaintiff by his attorneys; and it being proved to the satisfaction of the court, that William Dutton, John J. Deshon, Firman Hurtell, William D. Gager, Alexander McKenzie, Charles J. Mansony, Henry Hitchcock, George N. Stewart, and Abner S. Lipscomb, were tenants in possession of the said messuage in the declaration of ejectment mentioned at the date of the service of the same, and were served with a copy thereof; and the said Richard Roe, being solemnly called, came not, but wholly made default, whereby the said plaintiff therein against him remains altogether undefended. It is therefore considered by the court, that the said plaintiff recover against the said defendant the balance of the unexpired term in his declaration mentioned; but George N. Stewart, Abner S. Lipscomb and Henry Hitchcock, esqrs., as landlords of said tenants in possession, having appeared and signed the consent rule, are admitted to defence, and a stay of execution on said judgment is awarded until the decision of the issues joined between the parties; and this day came the said plaintiff and the said Stewart and Lipscomb, by their attorneys; whereupon came also the following jury, to wit: S. H. St. John, E. Chidsey, W. J Ferris, C. S. Shreve, D. S. Baldwin, D. Jones, T. J. De Yampert, Jno. Parham, Robert Strother, J. Silver, H. Stickney, and R. D. Hall, twelve good and lawful men, who being elected, tried, and sworn, upon their oaths

do say, that we, the jury, find the defendants, Stewart & Lipscomb, not guilty, as alleged in said declaration; wherefore it is considered by the court that the said defendants go hence without day, and recover their costs by them in their defence in this behalf expended. In this cause his honor, William Crawford, not sitting.

Memorandum.

Be it remembered that, on the trial of this cause, the plaintiff's counsel tendered to the court a bill of exceptions, which was accepted, signed, and sealed, and ordered to be made a part of the record of this cause; which bill of exceptions is as follows, to wit:

Bill of exceptions.

JOHN DOE ex dem. Mary Farre et al.,
vs.
RICHARD ROE, cas. ejector, and A. S. Lipscomb et al.

In the circuit court of the U. States, southern district of Alabama, March term, 1843.

This cause coming on to be heard before said court, the pl'ffs submitted to the jury the copy of a patent from the United States, which is hereunto attached, marked exhibit A, which was not objected to; and it was admitted, on the part of the defendants, that it embraced the land which was set forth in the declaration, as the subject matter of this suit.

Plff's then read the depositions of John Jones, who testified, in substance, as follows, viz: that he was acquainted with Simon Farre in his life time; that his acquaintance commenced about 50 years before the date of the deposition, (Sept. 7th, 1840,) and that Simon Farre resided at that time in the Choctaw nation, and was a Frenchman and an Indian trader, about 30 years of age; that he owned considerable property, and was a man of education and high standing; that, about the time of building the fort at Jones's bluff, called Fort Confederation, Simon Farre moved to that place, and acted as French interpreter; that, when witness first knew Simon Farre, he was not married, but that, some time previous to his moving to Jones's bluff, he married the daughter of an Indian chief whose name, witness thinks, was Faming Mingo; that witness is confident that Simon Farre married the Indian woman according to the customs of the Indian country; that it was stated, thro' the Indian country for some time previous, that he intended to take the Indian woman as his wife; that witness was not at the marriage, but many of his acquaintances were, and he understood they were married; that the mode of Indian marriage was, that the parties being pleased with each other, the man consulted the relations of the woman, and they being pleased, he entered into a stipulation with her parents for her; and the contract being agreed upon, he gave the mother a present of a flat wampum, a belt, or something of the kind, which was deemed a ratification of the contract; that they then had a feast at the house of the woman's parents; after which the man took his wife home with him; and his

obligations to support her, so long as they lived together, were considered to be as binding as in like circumstances among the whites; and that a separation between man and wife as seldom occurred among them as among the whites; that witness was invited to the marriage feast of these parties, but did not go; and that, a short time afterwards, he saw them living together as man and wife; and that it was generally understood that Simon Farre had taken the Indian woman regularly to wife.

The witness further states, that, some [time] after said marriage, and after they had one child, he moved with his said wife to Jones' bluff, in Sumpter county, about the time of the building Fort Confederation at that place, where he acted as French interpreter, and built a comfortable house; that he cultivated considerable land, had a number of servants, and entertained much company; that witness was frequently at his house, and saw his wife who superintended the domestic arrangements of his household, and was considered as his wife by all who visited at his house; that she bore his name, and sat at the head of his table, and that in conversation Farre called her his wife; that witness lived at Jones' bluff, an immediate neighbour to Farre, and has frequently heard him call this Indian woman his wife; and that he exhibited the ordinary degree of affection towards her; and that his usual mode of expressing himself to her, when he wished any thing done, was "wife do so, or so;" that he introduced her to his friends as his wife, and that her children bore his name; that he recognised them as his children, and that they were treated as such in his house, and that he always exhibited towards them the affection and feeling of a parent towards a child; that Simon Farre must have lived with this Indian woman named Mary Ann, the daughter of an Indian chief, at Jones's bluff, from ten to fifteen years; during which time she bore him several children—one of whom was called Alexis Farre, and one Mary Farre, and one John Baptiste Farre: that the acquaintance of this witness with Simon Farre and his family continued to the time of Farre's leaving Jones's bluff; that when Farre left the Fort Confederation he took with him his Indian wife and children, and moved south, since which time witness has not seen him or his family, but he understood that he settled at the mouth of Pearl river; that witness must have been acquainted with Farre from fifteen to twenty years—during the greater part of which time he had the said Indian woman for his wife, and never separated from her, nor lived with any other woman, but took her away with him. He further states that whites frequently intermarried with the Indians, using the Indian ceremonies, and that, when a man took a woman to wife according to their customs, it was expected that he would maintain and support her, and that the connection was for life; and that, altho' they were at liberty to separate, such an occurrence was not anticipated, and happened as seldom as a separation between man and wife among the whites, and that the connection generally endured for life; that children born from such marriages were entitled to the estate of the father by descent, and that many of our best citizens are descended from such marriages; witness thinks that Farre left Jones's bluff at the

time of the evacuation of Fort Confederation; that he married the Indian woman about the time of the building of the fort, and that the fort was built about 50 years before the taking of the deposition.

Plaintiffs then read the deposition of Louisa Lardner, who testified that Simon Farre was interpreter for the Choctaw Indians, and that he married an Indian chief's daughter, in the Choctaw nation, named Mary Ann, from which marriage they had the following children, viz: Charles Farre, Mary Farre, Alexis Farre, John B. Farre, and Louis Farre; that he always provided for, cherished, and maintained his said wife and their children; that he was in the habit of stopping at and visiting the house of witness, while he lived in the Choctaw nation, and that at one time his said son, Alexis, was with him; that Simon Farre and his wife Mary Ann moved to Pearl river, in Hancock county, Mississippi, at which place she resided until about a year since, when she died; that witness was acquainted with Simon Farre for about 50 years, and that he always showed a great deal of respect and affection for his said wife Mary Ann and their children; that Simon Farre and his said wife lived together upwards of twenty years; that they cohabited as man and wife, and acknowledged and addressed each other as such in society, and that they treated and brought up their children as their legitimate offspring, and that it was well known by all the old inhabitants that said Mary Anne was the wife of said Simon, and that the first wife of John Farre, father of Simon Farre, was a Chickasaw Indian, by whom he had several children; that for 20 years and upwards, Simon Farre lived and cohabited with his said Indian wife, and that witness never knew him to live with any other woman, until his connection with Celeste Rochan; and that during that connection with Celeste Rochan, he generally kept several other women, and that the aforesaid Mary Ann has always been of good character, and was highly esteemed by all who knew her. She states, that many white men married Indian women, and that Louis Farre, one of said sons of Simon and Mary Ann Farre, died long since, leaving the following children, viz: Mary, Louis, Celeste, and Edward, of whom Mary married John B. Nicaise, and Celeste married Clement Nicaise.

Plaintiffs read also the deposition of Joseph Chaton, who testified that he was acquainted with Simon Farre, while he lived in New Orleans, and on Pearl river, where he was a neighbor of Simon Farre; that Simon Farre had six children by an Indian woman, named Mary Ann, viz: Mary, Catherine, Alexis, Louis, John Baptiste, and Charles; that Simon Farre lived for fourteen years among the Choctaw Indians, in their nation; that he was interpreter for them for the Spanish Government; that on or about 1801, Simon Farre went to live in N. Orleans, and sent his brother-in-law, Eugene Chastaret, and all his own family named above, to settle on Pearl river, where he had built a house for said Indian woman and her children; that the children above mentioned were all born some time previous to the year 1803, and that Simon Farre provided for and maintained said children; that Louis Farre, one of the aforesaid sons of Simon Farre, who is now dead, married a white

woman, by whom he had several children; that witness, at the time of taking his deposition, is 69 years of age; that Simon Farre died in Mobile, in 1813; that witness was appointed, by the court of Hancock county, testamentary executor to said Simon Farre, in lieu of Duplantier, who had been discharged for not having complied with the requisitions of the law; that the children of Simon Farre were respectable, and associated with white persons; that two of them, Catharine and Louis, are dead, and that the others are now living, some of them on the Bay of St. Louis, and others on the river Bogue Chitu; that it is well known to the old inhabitants at the Bay of St. Louis, that Simon Farre had an Indian wife named Mary Ann, and that the aforesaid children are the children of Simon Farre by said woman, and that he has always recognised them as his legitimate children; that the custom of the Indian marriages is, for the man to apply to the uncle on the mother's side of the woman whom he wishes to marry; that the aforesaid Mary Ann continued to live in the same settlement on Pearl river, now Hancock county, Mississippi, and that when Simon Farre's family moved to Pearl river, that country was subject to the Spanish Government, and that he, witness, lived adjoining the house of Simon Farre and said family for ten years.

Plaintiffs also examined Joseph Ribbs, who testified that Simon Farre died in Mobile, about the month of July, in the year 1813, a few months after the American Government was established *de facto* in Mobile.

He further testified, on his cross examination, that, according to the Choctaw usages, a man might leave his wife whenever he chose, and that he might have more wives than one at the same time; he also stated that, from common reputation, the plaintiffs' lessors were reputed illegitimate, and the children of C. Rochon were reputed legitimate.

The plaintiffs having closed, the defendants read the deposition of Evariste Marchand, who testified, that in August, 1841, he was 53 years of age; that he was born in New Orleans, and now resides in that city; that he knows Mary Farre, Alexis Farre, John B. Farre, Charles Farre, Edward Farre, John B. Nicaise and his wife Mary Farre, Celeste Farre, and Louis Farre, the plaintiffs' lessors; that he knew Simon Farre, in his lifetime, as far back as the year 1800, at which time Simon Farre moved into a house in N. Orleans, directly opposite the house of deponent's father, where deponent then lived; that Simon Farre was then Indian interpreter and agent for the Spanish Government; that the family of deponent's father, and that of Simon Farre, were on the closest terms of intimacy; that witness was often in the said Farre's house, and was on the same footing there as in his own father's house, from 1800 to 1803, during which period said Farre was married, and had one child; the maiden name of his wife was Celeste Rochon; about the latter part of 1803, said Farre moved his family to Pearl river, in a schooner called "La Perle," in which the family of deponent's father, including witness, also moved at the same time; that deponent's father's family resided there until 1808; said Farre's family resided there during all of that time, and his widow, Mrs. Graves, now lives in the same

place; the residence of deponent's father was about 200 yards from that of said Farre, and when they first moved to Pearl river, they found residing there one Eugene Chastang and his wife, who was the sister of said Farre; said Farre had by his wife the following children: John, Augustine, Prezier, whom witness knew; there were one or more born afterwards; said Farre had several illegitimate children by different women; by a Choctaw woman, known by different names: Margo, Pe-sa-yugamy, and Mary Ann, he had six children, with all of whom witness was personally acquainted; their names are Mary, Alexis, Catherine, Louis, Charles, and John B.; Catherine and Louis are dead; the others are living, and are mentioned as lessors of plaintiffs; the other lessors, Edward, Mary, Celeste, and Louis, are the children of the aforesaid Louis, deceased; when Simon Farre moved to Pearl river, witness found the said Choctaw woman residing a short distance from the residence of said Farre, but not within sight of the house; witness had been at said settlement eight or ten days before he saw said Choctaw woman, or her said children; he first saw them at their own hut; they cultivated with their own hands a small piece of land for their subsistence; the dress of the family, except the daughters, was the same worn by all the Choctaw Indians; the mother wore a short petticoat, extending from the waist down to about the knees, and a blanket thrown occasionally over her shoulders; when working in the field, and about the ordinary affairs of the place, she wore nothing but the petticoat; that was her only dress most of the time; the common dress of the boys was the breech cloth and blanket; the latter often dispensed with; Catharine and Mary were usually dressed in coarse gowns, similar to those worn by negro servants; the mother speaks no language but the Choctaw; the children a little French and English, and are entirely uneducated, and can neither read nor write; among themselves they speak Choctaw; Charles can read a little, and perhaps may know how to write a little; they were always treated and spoken of by Simon Farre as illegitimate, and witness never knew him send any of them to school; he never heard from the mother or the children, until lately, that the children were legitimate, or that the mother was married to Simon Farre; and all that he has heard was in reference to the present law suit; he knew them from 1803 to 1808, and was in the habit of conversing with them almost daily; from 1808 to 1834, he saw them occasionally, and conversed with them on ordinary matters interesting to themselves, and during all the period he never heard of any pretensions that the mother had been married to Simon Farre, or that the children were legitimate; he never heard of such pretensions until within a year; witness is acquainted with the Choctaw custom, and speaks their language, as well as his mother tongue, and knows well their marriage relations; he was resident among them, and had constant intercourse with them for 30 years; marriage as understood among civilized people does not exist among them; when an Indian sees a girl whom he wants, he applies to her parents, generally to her mother, and obtains the daughter by way of purchase, giving from one to five dol-

lars, sometimes a blanket, or whiskey, or a trinket; sometimes previous to the application to the mother, he throws to her a stick or chip, and if she picks it up, it is an expression of her willingness to go with him; sometimes the purchase is made without this; they have no ceremony of marriage; when a man buys a girl, it is not uncommon, if the man has means, for him to purchase whiskey, and have a frolic; a man may have at the same time as many women as he chooses; nothing binds the man and woman together, but their consent, which either party may withdraw at any time without notice or ceremony; they have no words corresponding to husband and wife; the man speaking with the woman with whom he cohabits, calls her woman, or that woman; and she calls him man, or that man; the word "thactche" is sometimes applied by an Indian to the woman with whom he cohabits; it signifies companion, but is seldom used; they have no words to express the distinction between wife and concubine, or mistress, and no such distinction is known among them; witness has known an Indian to buy several women at the same time, and send away one woman, or perhaps all, on the next day; they sometimes keep their women a week, or a month, or a year, or more, and sometimes live with them until death; the relation is the same in all these cases; when they separate, the children usually remain with the mother, and are supported by her; when an Indian dies, his property goes to the control of his brothers, and if any of the children or wives are in want, it is common for him to give the property, or a part of it, to them, but this depends entirely on his will; they have no word to express marriage; they say he has taken a woman, as they say he has taken a horse, or a dog; Alexis Farre lives near Pearlington, and has two wives, as he calls them; Charles has two wives, and Jno. B. has two or three wives; when an Indian man and woman separate, they take another if they choose, just as if they had never been connected; witness was in the habit of being about the house of Simon Farre almost every day from 1803 to 1808, and he occasionally saw the Indian children about the yard, and sometimes in the kitchen, but never in the house; he never heard of Simon Farre being married but once; witness says that the customs of the Choctaws, as he has described them, are such as existed among them 20 or 30 years ago, when he knew them best.

Dfts. also read the deposition of Simon Marchand, who testified that in Jan'y, 1841, he was 76 years old; that he was born in and resides in New Orleans; that he was acquainted with Simon Farre in his lifetime; that he first became acquainted with him in New Orleans; that said Farre was married to Miss Celeste Rochon; that the witness and Farre were near neighbors in New Orleans, and that their families moved together in the same vessel to Pearl river; and thinks they staid there about six or seven years, during which time he lived near to said Farre, and was on terms of intimacy with him, and with his family; that he knew Mary, Alexis, Charles, Catharine, and John Baptiste, children of an Indian woman usually called Margo. When he moved to Pearl river, he found this Indian woman and her children living in the neigh-

borhood; their dress and appearance was similar to that of other Indians or half breeds, except Mary, who occasionally lived in New Orleans; witness lived very near to Farre, and was frequently in his house, and has seen the Indian children go there for salt and corn, but never knew them go further than the gallery; Farre was in the habit of giving them corn and salt, when they were in want, but they derived their subsistence principally from a small piece of land cultivated by their mother; they were reputed to be the illegitimate children of Simon Farre; witness never heard of Simon Farre being married to their mother, or of their being legitimate; they were treated by him as men usually treat their illegitimate children, although he manifested much less regard for them than for another illegitimate child called Clare; there was very little difference between his treatment of the children of said Margo, and his treatment of other Indians; he has never heard of Simon Farre being married but once, and that was to Celeste Rochon.

Dfts. read also the deposition of C. J. Chastang, who testified that she is aged 72 years, and was born in New Orleans, but lives in Mobile county; that she knows the lessors of plffs., their names are Louis, Mary, Alexis, Catharine, John B., and Charles; she knew Simon Farre, he was her brother; she knew him from her earliest recollection to his death; he was born in Mobile; he lived in Mobile, but afterwards moved to the Choctaw nation, and there remained a considerable time acting as interpreter, and was also engaged in trading, and frequently came to Mobile; he afterwards removed to St. Stephens in consequence of some Indian troubles, and continued to act there as interpreter; he went to New Orleans, and there remained until Louisiana was given up to the American Government; during that time he married in New Orleans, and afterwards removed to Pearl river, where he resided until near his death; he died at Mobile on a visit to a daughter; witness was present at his death; Simon Farre was married to Celeste Rochon in 1801; he was married only once; she knew the wife of Simon Farre; his wife lived with him in New Orleans about two years, and afterwards at his plantation on Pearl river; neither Simon Farre nor his wife had any Indian blood in them; he had five children by his wife, John, Augustin, Prezin, Louise, Eucharici, and Margarite; they were known and reputed as legitimate, and so treated by Simon Farre in his lifetime; he had no other legitimate children; he had several illegitimate children; among them were children by a Choctaw woman, named Alexis, Mary, Louis, Catharine, John Baptiste, and Charles; she does not know their ages, and knows nothing about this Indian woman that would distinguish her from other Indians; after Farre's marriage, and removal to Pearl river, this Choctaw woman occupied a small piece of ground at a short distance from his residence, which she cultivated with other Indian women; she was living at Pearl river, as much as two or three years before Farre moved there; there was no connexion between her and Farre after he left the Indian nation; her children lived with her, and seldom went to Farre's house; they went there seldom, except during his absence, and never went into his house; they were reputed as

illegitimate, and always so treated by Farre; the woman was a full blooded Choctaw; witness resided at Pearl river, and was the next neighbor of Farre, and knew the foregoing facts from her own observation; the Indian never claimed to be his wife, and was considered by all who knew the parties to be his concubine; he had several concubines; Farre aided in support of all his illegitimate children before his marriage; she does not know that he did much for them after his marriage; the children of the Choctaw woman sometimes went to Farre's house at Pearl river for provisions; Madam Farre sometimes furnished them, but this was seldom; by the custom of the Choctaw Indians a child does not inherit property from the father; the property passes after death to the brothers and sisters of the same mother; by the Choctaw customs, a man may have several wives at the same time.

The defendant proved from a register of a church in New Orleans, that the children of Celeste Rochon were duly baptised as legitimate; and also gave in evidence two certificates of baptism, of which copies are annexed. The defendant then tendered in evidence a copy from the records of the orphans' court of Mobile county, which is hereunto annexed, and made part of this case, marked exhibit B.

The pl'ffs objected to the admission in evidence of said document on the grounds—

1st. That the probate from the county court of Mobile county was made without notice to the pl'ffs' lessors, and without their being parties to the proceedings before said county court, and the same was not binding on them, and could not conclude their rights.

2d. That the probate aforesaid did not purport to establish the will mentioned therein, as a will valid to convey or dispose of real estate.

3d. That there were not three witnesses to said will.

All of which objections were overruled by the court, and the court decided that said probate not having been contested within 5 years, was conclusive to establish the will as a valid testamentary conveyance of real estate, and could not be contested in this court by the plff's, and permitted the document aforesaid to be read to the jury, and so instructed them; to all of which the pl'ff excepted.

The defendants then tendered in evidence a document, a copy of which is hereunto attached, purporting to be a deed from Celeste Graves and John Graves to Williams & Co., exh. C.

Pl'ffs objected to this evidence, on the ground that it was not a valid conveyance of the estate mentioned therein, because the will aforesaid, did not give to Celeste Graves and Isaac Graves power to sell real estate; and that there was no evidence that the land embraced in said deed was any part of the land mentioned in the will.

These objections were overruled by the court; and the court permitted the deed to be read to the jury, and instructed the jury that Celeste Graves and John Graves were authorised by and under the will to convey the land aforesaid.

To all of which the pl'ffs excepted.

Dfts. exhibited in evidence an imperfect Spanish grant to Simon

Farre, made previous to the year 1800; and they showed that Farre, in his lifetime, had petitioned for its confirmation; that after his death, it was reported for confirmation by Com'r Crawford, and that the patent, of which a copy had been exhibited by the pl'ff, was in possession of dfts.

The dfts. also gave in evidence, conveyances to them of the land from the children of Simon Farre by Celeste Rochon.

The court charged the jury, that if they believed that the marriage relied on by plff., was no other than a marriage under the Choctaw laws and usages, and that by those laws and usages a man might marry several wives at the same time, and that they might part when they pleased, that such marriage could not be recognized by our law, and would not make the children legitimate, so as to take by descent; and that they would have no title.

To which charge the plaintiff excepted, and he prays the court that this his bill of exceptions may be signed and sealed.

(Signed) J. McKINLEY, [SEAL.]

" Filed September 7th, 1843.

D. FILES, *Clerk.*"

Documents annexed to the foregoing bill of exceptions.

" *Exhibit B.*"

" July 22nd, 1819. Court met agreeably to adjournment.

Moved, that an authenticated copy of the will of the late Simon Farre, duly authenticated from the State of Louisiana, be admitted to probate in this court; and that letters of administration with the will annexed issue to Celeste Graves, relict of the said Simon Farre, and to Isaac Graves, who has since intermarried with said Celeste, is granted, on their entering into bond and security in the sum of ten thousand dollars; and that H. V. Chamberlain and John Williams be accepted as securities."

Know all men by these presents, that on the 20th day of July, in the year of our Lord one thousand eight hundred and thirteen, and the thirty-eighth independence of the United States of America, in conformity of my order bearing date of this day, personally appeared before me James Pelot, judge of the court of probates in and for the parish of New Orleans, Pierre Carroby and Martin Pelleim, both resident in the parish of New Orleans, who being duly sworn agreeably to law, declare and say: that a packet folded up as a letter, sealed with three red wafers, which I presented to them, and bearing the following superscription: " Je declare que ce pacquet contient mon testament et derniere volontés, que ye depose entre les mains de Mr. Naicesse Brontin, mon ami, lui recommendant de le rendre publique, sitot apres ma mort. Nouvelle Orleans, le 18 Mai, 1812. Simon Farre." That the same is the proper handwriting of him the said Simon Farre.

Signé, PRE. CARRABY,
D'AMARTIN PELLEIM.

Sworn to and subscribed before me, New Orleans, July 20, 1813.

Signed, J. PELOT, *Judge.*

Whereupon, I, the said judge, caused the said packet to be broken open, in which was found four writing pages, signed Simon Farre; and after having caused the same instrument of writing to be read in presence of the above named witnesses, who did further recognize the same to be totally written by the said Simon Farre.

Signé, PRE. CARRABY,
D'AMARTIN PELLEIM.

Sworn to and subscribed before me, New Orleans, July 20, 1813.

Signed, J. PELOT, *Judge.*

Whereupon, I, the aforesaid judge, do hereby declare the aforesaid instrument duly proved according to the law of this State, as being the last will and testament, *in scriptas*, of the late Simon Farre, and order the said last will to be deposited and recorded in the register office of this court, that copies thereof may be delivered to all parties it may concern.

Signed, J. PELOT, *Judge.*

Ne varietur. Au nom de dieu, assi soit il.

I, the undersigned, Simon Farre, a native of Mobile, having always lived a good christian, and desiring to die the same, as death may take me off at any moment, while I am in perfect health in body and mind, am about to make my will, and it is made in the manner following: In the first place I recommend my soul to God, and I direct that after my death my body may be buried in the most humble manner possible, and that it be buried in the place which my testamentary executor may deem most suitable; to him I leave the arrangement of my funeral, for such is my will. Likewise, I declare myself to be married to Miss Celeste Rochon, from which marriage we have five children, viz: John Farre, Augustin, Onesimus, Eucarice, and Marguerite Farre, whom I declare to be legitimate, and all those who may be born of my said spouse during our marriage.

Likewise, I declare that I owe some debts, which I direct my testamentary executor to pay; and likewise to receive divers sums which are due to me, which he shall employ for the best interests of my family.

Likewise, I declare that I own many tracts of land, of which one is an English concession of twelve hundred arpents, on the Little River of Pearls; also, one of eight hundred arpents on the Great River of Pearls, both coming from my father; one other of twelve hundred arpens on the same river, which was granted to me by the Spanish government; likewise one that I cultivated on the Island, also of eight hundred arpents, at a place named Onacaya; likewise a tract of land at Mobile, of four hundred arpents, which I obtained from Mr. Simon Andre; and four hundred arpents up the river at a place named La Bonkelle, proceeding from my father, an English concession. I own also lands which have been given to me by the Indians, on the river Tombecbee, bounded by Chonquinatch and , which land my testamentary executor shall sell, or retain in a state of nature, as he shall judge to be best for the interests of my family. Likewise, I give to Simon Farre,

aged twelve years, the son of Rebecca Austin, the sum of fifteen hundred dollars, which shall be raised on my estate; and it shall be paid to him when he shall be of the age of majority. I have likewise in my possession for him, the sum of three thousand three hundred and forty-seven dollars and three bits, coming from the estate of his mother, which is to be paid to him at his majority. I wish that he should be taught to read and write, and a good trade; such is my will.

Likewise, I desire that my spouse Celeste Rochon, may be the tutrix of my children; such is my will.

Likewise, I name for my testamentary executor Mr. Arman Duplantier Pien, to whom I give power conjointly with my spouse, to act extrajudicially, to purchase, make sale, receive, and give acquittances, make every species of contract which may be necessary for the interests of my family, and all the business which may have any connection with my succession; the accounts being regulated, they alone to decide on them, dispensing my testamentary executor and my spouse from giving any account; such is my will.

Likewise, I name for curator of my children Mr. Fergus Duplanter, to whom I recommend with my testamentary executor to watch over the interests of my children, recommending particularly to him to cause the best education to be given to them; such is my will.

Likewise, I declare for my sole and only heirs, my children, wishing that after my death my sucession shall be equally divided among them, when they shall be of the age of majority; for which purpose there shall be made after my death an inventory of all my property, of which the appraisers shall be chosen by my spouse, my testamentary executor, and the curator, on which calculated inventory there shall be determined the part which shall belong to each of my children, it being well understood that the part which shall belong to their mother shall first be provided, to whom I give the half of all that we have acquired together, she having aided me with all her economy and with all her industry. I leave likewise to my spouse the enjoyment of all my property, and I wish that from the moment when my children may be of the age of majority, she shall give to each of them that which shall be their share.

Likewise, I declare, that I hereby annul and destroy every species of testament or codicil which I may have made before this, it alone to be carried into execution. Such is my will.

(Signed) SIMON FARRE.

New Orleans, 18*th May*, 1812.

Ne varietur, (Signed) J. PELOT, *Judge.*

I do hereby certify this to be a true copy of the original, duly filed and recorded in my office.

For THOMAS BEALES,
Register of wills.
BRIENE, *Dep't register.*

New Orleans, Dec'r 7th, 1838.

STATE OF LOUISIANA,
Parish of New Orleans, court of probates:

I, James Pelot, judge of the city and parish of New Orleans, and *ex officio* judge of the court of probates in said parish, do hereby certify, that the signature of Briene, to the annexed document, is that of the deputy register of wills for the said court of probates, and that full faith must be given to it in the capacity of deputy register of wills.

In testimony whereof, I have set here my hand and seal, this 7th day of December, 1818.

JAMES PELOT, *Judge*, [SEAL.]

Exhibit C.

Know all men by these presents, that we, Isaac Graves and Celeste his wife, formerly Celeste Farre, the lawful wife of Simon Farre in his lifetime, and by the last will and testament of said Farre, duly nominated, constituted, and appointed the tutrix of the minor children, with full power to transfer and sell, extrajudicially, the real estate of said Farre, for the benefit of those whom it might concern; which said last will and testament was made and executed at the city of New Orleans, in the State of Louisiana, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and twelve, and subsequently proved and established according to the laws of the said State of Louisiana, and a duly authenticated copy thereof admitted to probate in the orphans' court for the county of Mobile, in the Alabama territory of the United States, on the twenty-second day of July, in the year of our Lord one thousand eight hundred and nineteen; upon the probate thereof, letters of administration, with the will annexed, on the estate of said Simon Farre, were, by the said orphans' court, committed to the said Isaac and Celeste Graves, have, for and in consideration of the sum of four thousand dollars, to us in hand paid, by John Williams and George B. Damerm, trading and carrying on mercantile business in the town and county of Mobile, under the name and firm of John Williams & Co., the receipt whereof we do hereby acknowledge, *have* granted, bargained, sold, released, and confirmed, and by these presents do grant, bargain, sell, release, and confirm, unto the said John Williams & Company, and to their heirs and assigns forever, all that messuage or tract of land, situate, lying, and being below the town of Mobile, on the west side of Mobile river, containing ten acres in front on said river, and running back in depth forty acres, bounded on the north by a small bayou, known and named Durand, on the south by land formerly considered vacant, and on the east by Mobile river; which said tract of land was acquired by the said Simon Farre, in his lifetime, and in virtue of a deed of transfer, made and executed at the town of Mobile, before Manuel De Lansas, military and political commandant thereof, on the eleventh day of June, one thousand seven hundred and ninety-eight, between Simon Anan and the said Simon Farre, reference thereto being had will more fully and at large appear; together with all and singular the hereditaments and appurtenances to the same belonging or appertaining, and the

reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and every part and parcel thereof; and also all the estate, right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, of the said Isaac and Celeste Graves, in, to, or out of the said lands, tenements, hereditaments, and premises, and all and singular other the premises hereinbefore mentioned, with their appurtenances, unto the said John Williams & Company, their heirs and assigns, and to their only proper use and behoof. And the said Isaac and Celeste Graves, for themselves, their heirs, executors, and administrators, do covenant, promise, and agree, to and with the said John Williams & Company, their executors, administrators, and assigns, in manner and form following, that is to say, that the said John Williams & Company, their heirs and assigns, shall and may, peaceably and quietly, have, hold, and enjoy the said lands, tenements, hereditaments, and premises, and every part and parcel thereof, without the let, suit, trouble, eviction, or disturbance of the said Isaac and Celeste Graves, their heirs or assigns, or the heirs or assigns of Simon Farre, or of, or by any other person or persons, lawfully claiming, or to claim, from, by, or under, or in trust for him, them, or any of them; that they, the said Isaac and Celeste Graves, will, if necessity should require it, whenever called on by the said John Williams & Company, or their heirs or assigns, execute any and all such further conveyances or instruments in writing, as may be necessary to secure an indefeasible estate, in fee simple, to the said John Williams & Company, or to their heirs or assigns; and lastly, should the title of them, the said Isaac and Celeste Graves, as the legal representatives of the said Simon Farre, be invalidated, and the said John Williams & Company, their heirs or assigns, be legally ejected or evicted from the premises hereafter, that then the said Isaac and Celeste Graves, their executors and administrators, or assigns, will refund to the said John Williams & Company, their heirs or assigns, the amount of the purchase money, with legal interest on the same.

In witness whereof, the said Isaac and Celeste Graves have hereunto set their hands and seals, at the town and county of Mobile, this twenty-fourth day of July, in the year of our Lord one thousand eight hundred and nineteen.

ISAAC GRAVES, [L. S.]
CELESTE GRAVES, [L. S.]

Signed, sealed, and delivered in presence of—
JOHN ELLIOTE.

Alabama, Territory of the United States, county of Mobile, ss:

Personally appeared before me, Benjamin Dubroca, esquire, one of the justices of the quorum for said county and Territory, the above named Isaac Graves and Celeste Graves, who acknowledged that they signed, sealed, and delivered the foregoing deed on the day and year therein mentioned, to the said John Williams & Company.

Given under my hand and seal, this twenty-fourth day of July, in the year of our Lord one thousand eight hundred and nineteen.

BENJ. DUBROCA, *J. Q.* [L. S.]

Also, on the same day, personally appeared before me, Benjamin Dubroca, justice of the quorum as aforesaid, the above named Celeste Graves, wife of Isaac Graves, who acknowledged, on a private examination, apart from her husband, that she signed, sealed, and delivered the foregoing deed as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband, Isaac Graves.

Given under my hand and seal, the day and year above written.

BENJ. DUBROCA, *J. Q.* [L. S.]

State of Alabama, Mobile county:

I, William Taylor, clerk of the county court of Mobile county, certify, that the foregoing is a transcript of the record of a deed from Isaac Graves and Celeste Graves to John Williams & Company, as recorded in my office, in Deed book C., pages 154, 155, 156, 157.

Given under my hand and seal, this 31st day of October, A. D. 1840.

WM. TAYLOR, *Clerk.*"

I, David Files, clerk of the circuit court of the United States, for the fifth (late the ninth) judicial circuit and southern district of Alabama, do hereby certify, that the above and beforegoing thirty pages contain a *true, full*, and *perfect* exemplification of the record and proceedings, in a certain cause lately pending before said court, wherein John Doe, on the demise of the heirs of Simon Farre, was plaintiff, and Henry Hitchcock, William Dutton, George N. Stewart, A. L. Lipscomb, and others, were defendants.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and affixed the seal of said court, this eighteenth [SEAL.] day of September, in the year of our Lord one thousand eight hundred and forty-three.

DAVID FILES,
Clerk C. C. S. D. Alabama.

Writ of Error.

UNITED STATES OF AMERICA.

The President of the United States, to the honorable the judges of the circuit court of the United States, for the fifth judicial circuit, and southern district of Alabama.

Because in the record and proceedings, as also in the rendition of judgment in a plea in said court before you, wherein John Doe on the demise of Mary Farre et als. is plaintiff, and Richard Roe, casual ejector, A. S. Lipscomb et als. are defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; and it being fit, if error there be, the same should be corrected, and full and speedy justice be done to the parties aforesaid, do command you, if judgment be rendered, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, together with all things concerning the same, to the Supreme Court of the United States, so that you have the same at Washington, on the second Monday of January

next, in the Supreme Court of the United States to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further proceedings therein, to correct the error, what of right, according to law, and the custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, [SEAL.] this second Monday of January, in the year of our Lord one thousand eight hundred and forty-three.

Issued the 20th day of September, in the year of our Lord one thousand eight hundred and forty-three.

Attest: DAVID FILES,
Cl'k C. C. south. dist. Ala.

Executed. DAVID FILES,
Cl'k C. C. south. dist. Ala.

UNITED STATES OF AMERICA.

Circuit court of the United States for the fifth judicial circuit, southern district of Alabama.

The President of the United States to the marshal of said district, greeting:

You are hereby commanded to cite and admonish William Dutton, John J. Deshon, Furman Hurtell, William D. Gager, Alexander McKensie, Charles J. Mansoney, George N. Stewart and Abner S. Lipscomb, or their attorneys, Messrs. Stewart and Easton, to be and appear before the Supreme Court of the United States, to be held at the city of Washington on the second Monday of January next, then and there to hear errors assigned, on a certain writ of error directed to the circuit court of the United States for the southern district of Alabama, wherein John Doe, on the demise of Mary Farre, et al., are plaintiffs, and Richard Roe, casual ejector, A. S. Lipscomb et als., are defendants.

Herein fail not, and have you before said Supreme Court this writ, with your endorsement.

Witness the honorable William Crawford, one of the judges of the circuit court of the United States, for the fifth judicial circuit, and southern district of Alabama, this 22d day of September, in the year of our Lord one thousand eight hundred and forty-three.

WILLIAM CRAWFORD.

Executed, by serving a copy on Stewart and Easton, October 2, 1843.
WM. ARMISTEAD, *U. S. Marshal*,
By F. MOSELY, *D. M.*

Copy of bond.

Know all men by these presents, that we, Charles A. Marston and Wright C. Stanly, are held and firmly bound unto William Dutton, John J. Deshon, Furman Hurtell, William D. Gager, Alexander Mc-

Kensie, Chas. J. Mansoney, George N. Stewart and Abner S. Lipscombe in the just and full sum of ($200,) two hundred dollars, lawful money of the United States, to be paid to the said William Dutton, John J. Deshon, Firman [Hurtell,] William D. Gager, Alexander McKensie, Charles J. Mansoney, George N. Stewart and Abner S. Lipscombe, their executors, administrators, and assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and forty-three.

The condition of the above obligation is such, that whereas, Mary Farre, Alexis Farre, John Baptiste Farre, Charles Farre, Edward Farre, John B. Nicaise and Mary Nicaise, Celeste Farre and Louis Farre, have sued out a writ of error returnable to the Supreme Court of the United States on the second Monday of January, in the year of our Lord one thousand eight hundred and forty-four, on a certain judgment rendered against John Doe, on their demise, at the March term, eighteen hundred and forty-three, of the circuit court of the United States, for the ninth judicial circuit, southern district of Alabama, in a certain action of ejectment, wherein John Doe, on the demise of the aforesaid Mary Farre, Alexis Farre, John Baptiste Farre, Charles Farre, Edward Farre, John B. Nicaise and Mary Nicaise, Celeste Farre and Louis Farre, were plaintiffs, and Richard Roe and William Dutton, and John J. Deshon, Furman Hurtell, William D. Gager, Alexander McKensie, Charles J. Mansony, George N. Stewart and Abner S. Lipscomb, were defendants; now, if the said Mary Farre, Alexis Farre, John Baptiste Farre, Charles Farre, John B. Nicaise and Mary Nicaise, Celeste Farre and Louis Farre, shall prosecute their said writ of error to effect, or failing therein, shall pay to the said William Dutton, John J. Deshon, Furman Hurtell, William D. Gager, Alexander McKensie, Charles J. Mansony, George N. Stewart and Abner S. Lipscombe, all costs and damages which they may sustain by the failure of the said Mary Farre, Alexis Farre, John Baptiste Farre, Charles Farre, Edward Farre, John B. Nicaise and Mary Nicaise, Celeste Farre and Louis Farre, to sustain their said plea, then the foregoing obligation to be void, otherwise to be and remain in full force and virtue.

CHARLES A. MARSTIN, (SEAL.)
W. C. STANLY, *security*, (SEAL.)

"Filed 26th April, 1843. D. FILES, *clerk.*"

I, David Files, clerk of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, do hereby certify, the above and before going one page to contain a true, full and perfect copy of a bond now remaining on file in my office.

In testimony whereof, at office in the city of Mobile, I have hereunto (SEAL.) set my hand and affixed the seal of said court, this 18th day of September, A. D. 1843.

DAVID FILES,
Clk C. C. south. dist. Ala.

Filed, 18 January, 1844.